No. 01-1881

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

ANDREW G. MALONEY,

Petitioner,

v.

GRIEVANCE COMMITTEE FOR THE NINTH JUDICIAL DISTRICT OF THE STATE OF NEW YORK,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION : SECOND JUDICIAL DEPARTMENT

BRIEF IN OPPOSITION

GARY L. CASELLA
Chief Counsel
GLORIA A. BUNZE*
Of Counsel
GRIEVANCE COMMITTEE FOR THE NINTH JUDICIAL DISTRICT
Attorneys for Respondent
399 Knollwood Road, Suite 200
White Plains, NY 10603
(914) 949-4540

* *Counsel of Record*

175119

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTIONS PRESENTED

1. Whether the State of New York Court of Appeals properly dismissed the attorney's motion to reargue on the ground that the order sought to be appealed from does not finally determine the proceeding within the meaning of the Constitution of the State of New York?

2. Whether the State of New York Supreme Court, Appellate Division, which is empowered to oversee the practice of law in the state, after a full and fair hearing at which the attorney was represented by counsel of the attorney's choice, may disbar the attorney based upon the unique set of facts and circumstances in the case?

3. Whether the attorney's counsel's alleged failure to submit several documents during the disciplinary proceeding affected the Appellate Division's decision to disbar the attorney?

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PRELIMINARY STATEMENT

This brief is submitted in opposition to the application of Andrew G. Maloney, Petitioner herein, for a writ of certiorari. Petitioner disputes the decisions of the State of New York Supreme Court, Appellate Division, Second Judicial Department, which disbarred him from the practice of law and denied his motion to reargue, and the subsequent decisions of the State of New York Court of Appeals, which dismissed his various motions for leave to appeal the Appellate Division's disbarment order and its order denying reargument.

STATEMENT OF THE CASE

By order of the State of New York Supreme Court, Appellate Division, Second Judicial Department, dated and entered on December 27, 1999, the Grievance Committee for the Ninth Judicial District, Respondent herein, was authorized to institute and prosecute a disciplinary proceeding against Andrew G. Maloney, Petitioner herein. The issues raised by the disciplinary petition and any answer thereto were referred to a Special Referee, the Hon. Jerome M. Becker, a former judge of the State of New York Criminal and Family Courts, to hear and report, together with his findings on the issues. The order denied that branch of the Grievance Committee's motion seeking Mr. Maloney's immediate suspension from the practice of law pending the outcome of the disciplinary proceeding.

A petition containing 75 charges of professional misconduct was served upon Mr. Maloney. Charges 43, 71, 74 and 75 were withdrawn during the course of the disciplinary proceeding, based on newly received evidence.

Charges 7, 13, 14, 17, 18 and 20 through 23 were amended prior to the disciplinary hearing, also based on newly received evidence. Mr. Maloney admitted virtually all of the factual allegations contained in the charges but denied that he was guilty of professional misconduct.

During the course of the disciplinary proceeding (including at the disciplinary hearing) Mr. Maloney was represented by three successive counsel, all of whom are well respected and experienced in attorney disciplinary matters. At the disciplinary hearing, Mr. Maloney testified on his own behalf and called three character witnesses. He also submitted 12 character affidavits. After the hearing concluded, both parties submitted proposed findings to the Special Referee.

After consideration of both parties' proposed findings, the Special Referee issued a report sustaining all of the remaining 71 charges. The Grievance Committee moved to confirm the Report of the Special Referee. Mr. Maloney's counsel cross-moved to confirm the Report in part and disaffirm it in part, and the Grievance Committee submitted an affirmation in response, urging that Mr. Maloney's counsel's cross motion be rejected by the court as untimely. However, the court considered the cross motion despite its untimeliness, and referenced same in its subsequent decision.

After review of both parties' submissions, the Appellate Division, Second Department, sustained 53 of the remaining 71 charges, including charges that Mr. Maloney misappropriated client funds with which he was entrusted; entered into an improper business relationship with a client; breached his agreement to repay, upon request, an undocumented, interest-free loan from a client's escrow funds; made cash withdrawals from his escrow account; failed

to maintain and/or produce required bookkeeping records; commingled personal funds with client funds; disbursed escrow checks when he did not have funds on deposit to cover the checks and/or before the corresponding deposits cleared; transferred funds from one escrow account to another in order to cover a negative balance in the receiving account; and engaged in various other misconduct adversely reflecting on his fitness as a lawyer. The Appellate Division's order, dated April 16, 2001, states that in determining the appropriate measure of discipline to impose, it considered all the mitigation offered by Mr. Maloney. Nonetheless, the court determined that he was "guilty of serious professional misconduct that warrants his disbarment."

By motion dated May 16, 2001, Mr. Maloney sought leave to reargue the Appellate Division's decision disbarring him from the practice of law and, upon reargument, modification of the sanction imposed, as well as a stay of the sanction pending the Appellate Division's decision on his motion. The Grievance Committee submitted an affirmation in opposition to Mr. Maloney's motion to reargue, and a response to his reply.

By decision and order dated August 7, 2001, the Appellate Division, Second Department, denied Mr. Maloney's motion to reargue. On August 14, 2001, the Grievance Committee served said decision and order on Mr. Maloney by mail, with notice of entry.

On September 17, 2001, Mr. Maloney served the Grievance Committee with one copy of a Notice of Motion and Affidavit in Support of Motion for Leave to Appeal the Appellate Division's decision disbarring him, and that court's subsequent decision denying his motion to reargue, to the

State of New York Court of Appeals. The service was defective in that it was not timely. The Grievance Committee has no knowledge of when Mr. Maloney filed his motion with the State of New York Court of Appeals.

On October 23, 2001, the State of New York Court of Appeals issued a decision dismissing Mr. Maloney's motion for leave to appeal as untimely. On October 31, 2001, the Grievance Committee served Mr. Maloney with a copy of the court's decision.

On November 20, 2001, Mr. Maloney served the Grievance Committee with his Notice of Motion and Affidavit in Support of Motion for Leave to Reargue the Court of Appeals' October 23, 2001, decision. It should be noted that said motion requested leave to reargue only that branch of the decision dismissing Mr. Maloney's application to reargue the Decision and Order of the Appellate Division, Second Department, dated August 7, 2001, which denied Mr. Maloney's motion to reargue the disbarment order. Mr. Maloney's November 20, 2001, motion *did not seek to reargue the branch of the Court of Appeals' decision that dismissed his earlier motion to reargue the disbarment order*, which was dated April 16, 2001.

Consequently, the subsequent decision of the State of New York Court of Appeals, which was issued on January 15, 2002, dealt only with Mr. Maloney's "motion for reargument of so much of [his] prior motion as sought leave to appeal from an Appellate Division order denying reconsideration, which was dismissed as untimely by [the Court of Appeals] on October 23, 2001." The Court of Appeals granted the motion for reargument of the Appellate Division's order denying reconsideration of the disbarment

order and, upon reargument, dismissed that part of the motion for leave to appeal upon the ground that the order sought to be appealed from — *i.e.*, the motion to reargue the disbarment order — "does not finally determine the proceeding within the meaning of the Constitution." Thus, the earlier, October 23, 2001, decision of the Court of Appeals, which dismissed as untimely Mr. Maloney's motion for leave to appeal the underlying disbarment order, was left undisturbed. On January 18, 2002, the Grievance Committee served the Court of Appeals' January 15, 2002, decision on Mr. Maloney by mail, with notice of entry.

On February 15, 2002, Mr. Maloney served the Grievance Committee with his Notice of Motion and Affidavit in Support of Motion for Leave to Reargue the Court of Appeals' decision dated January 15, 2002. Said service was not timely, as it was required to be served by February 14, 2002. The motion was denied by decision of the Court of Appeals, dated March 26, 2002.

REASONS FOR DENYING THE WRIT

I.

THE STATE OF NEW YORK COURT OF APPEALS CORRECTLY HELD THAT THE ORDER ISSUED BY THE APPELLATE DIVISION, SECOND DEPARTMENT, DATED AUGUST 7, 2001, WHICH DENIED ANDREW MALONEY'S MOTION FOR LEAVE TO REARGUE THE COURT'S EARLIER ORDER DISBARRING HIM FROM THE PRACTICE OF LAW, IS NOT A FINAL ORDER WITHIN THE MEANING OF THE CONSTITUTION OF THE STATE OF NEW YORK.

In the motion before this Court, Andrew Maloney, Petitioner herein, argues that the State of New York Court of Appeals decision dated January 15, 2001, erred in holding that the Decision & Order issued by the Appellate Division, Second Department, dated August 7, 2001, which denied his motion for leave to reargue the Appellate Division's earlier Opinion & Order, dated April 16, 2001, disbarring him from the practice of law, "does not finally determine the proceeding within the meaning of the Constitution." His argument is fallacious.

As set forth in greater detail *supra* in the Grievance Committee's "Statement of the Case," Mr. Maloney never moved to reargue that branch of the Court of Appeals decision, dated October 23, 2001, which denied his prior motion for leave to reargue the Appellate Division's disbarment order. Rather, he moved to reargue only that branch of the decision that denied him leave to appeal from the Appellate Division's order denying reargument of its disbarment order.

As the Court of Appeals determined in its January 15, 2002 decision, the Appellate Division's Decision and Order, dated August 7, 2001, which denied Mr. Maloney's motion for leave to reargue the disbarment order, "does not finally determine the proceeding within the meaning of the Constitution." Rather, the underlying disbarment order finally determined the matter within the meaning of the Constitution, and Mr. Maloney never sought leave to reargue the disbarment order itself. Thus, Mr. Maloney failed to exhaust his procedural remedies in the courts below.

The definition of when an Appellate Division order is deemed final (and therefore is subject to review) is found in Section 5611 of the New York Civil Practice Law and Rules. Section 5611 states that an order shall be considered a final one only if it "disposes of all the issues in the action," and that "a subsequent appeal may be taken only from that [final] order **and not from any judgment or order entered pursuant to it**" [emphasis added]. In Mr. Maloney's case, the disbarment order was the Appellate Division's final order disposing of all the issues in the action, and the subsequent order denying leave to appeal was entered pursuant to the disbarment order. Thus, no appeal can lie from the denial of Mr. Maloney's motion for reargument of the disbarment order and, despite Mr. Maloney's far-fetched arguments to the contrary, the Court of Appeals correctly determined in its decision, dated January 15, 2002, that the order from which Mr. Maloney sought to appeal does not finally determine the proceeding within the meaning of the Constitution and, accordingly, was not subject to review.

II.

PETITIONER'S DISBARMENT FROM THE PRACTICE OF LAW IN THE STATE OF NEW YORK DID NOT VIOLATE HIS RIGHT TO EQUAL PROTECTION OF THE LAWS.

The sanction of disbarment imposed upon Andrew Maloney, Petitioner herein, by the State of New York Supreme Court, Appellate Division, Second Judicial Department, is not excessive or a violation of equal protection, as he claims. It is solely within the discretion of the Appellate Divisions of the State of New York Supreme Court to determine appropriate sanctions after reviewing each disciplinary matter individually and carefully weighing each unique set of facts and circumstances, being mindful that one of the clear purposes of such disciplinary sanctions is to preserve public confidence in the legal profession. *See Matter of Nulle*, 88 A.D.2d 657 (3d Dep't 1982); *Matter of Levy*, 261 A.D. 229 (1st Dep't 1941); *Matter of Flannery*, 212 N.Y. 610 (1914); New York State Judiciary Law § 90(4)(h).

The severity of the sanction imposed has been appropriately viewed as a question of fact, soundly within the discretion of the Appellate Divisions. *Cohen and Karger, Powers of the Court of Appeals*, § 108, pp. 452-453. Accordingly, the Appellate Division's decision in Petitioner's case should not be questioned unless it can be shown that the sanction imposed constitutes an abuse of discretion as a matter of law. *Cohen and Karger*, *supra* at § 459. Although Petitioner contends that such is the case herein, the State of New York Court of Appeals has rendered such a finding in an attorney disciplinary matter only where it found there was no evidence to sustain the charges of misconduct. *Matter of*

Clay, 282 N.Y. 140 (1940); *Matter of Mix*, 274 N.Y. 183 (1937); *Matter of Del Bello*, 28 A.D.2d 994 (2d Dep't 1967). Such clearly is **not** the case in Petitioner's matter.

Petitioner argues that the New York courts have been inconsistent in imposing disciplinary sanctions in cases of similar misconduct. In support of his argument, Petitioner cites several cases wherein the court censured attorneys, and several cases wherein the court imposed suspensions of varying length for misconduct that Petitioner apparently views as analogous in severity to his own. However, all the cases cited by Petitioner have widely varying fact patterns, both from each other and from the facts at issue in Petitioner's disciplinary proceeding. Rather than having the intended effect of demonstrating the unfairness of Petitioner's disbarment, a reading of the cited cases demonstrates that the Appellate Divisions, in the interests of fairness and justice, review each matter individually and carefully weigh each unique set of facts and circumstances before reaching a conclusion as to an appropriate sanction.

Each of the cases cited by Petitioner is distinguishable on the facts, including, for example, *Matter of Robert G. Whiteman and Stephen G. Gorray*, 226 A.D.2d 20 (2d Dep't 1996). In *Whiteman and Gorray*, the court sustained only six charges of professional misconduct, only one of which involved an escrow violation, as opposed to Petitioner's case, wherein the vast majority of the fifty-three charges sustained by the Appellate Division involved escrow violations. In deciding to censure the attorneys in *Whiteman and Gorray*, the court considered, among other mitigating factors, "the serious medical and personal problems besetting Gorray and his family" and that neither attorney had a prior disciplinary history. In contrast, Petitioner offered no medical

or personal problems to mitigate his proven misconduct, and he previously had been issued a letter of admonition for, *inter alia*, failing to use proper care to safeguard the interests of his client.

The facts in *Matter of Kenneth F. Popper*, 274 A.D.2d 28 (2d Dep't 2000) are also distinguishable from those at issue in Petitioner's case. In *Popper*, the court sustained only three charges of attorney misconduct, all of which related to one isolated incident in which the attorney mistakenly believed that he had received the total amount in settlement of a particular matter, which led him to disburse related funds prematurely. In contrast, the Appellate Division sustained fifty-three charges against Petitioner, relating to a pervasive pattern of professional misconduct over a period of years, including the serious charges that he repeatedly converted escrow funds. *Popper* is also distinguishable in terms of mitigating circumstances. The court found that Popper suffered from extreme emotional stress, which led the court to conclude that his attention to detail had been diminished, unlike Petitioner herein, who presumably was in full possession of his faculties at all times at issue. Popper also had an unblemished disciplinary history, unlike Petitioner herein. Accordingly, the court censured Popper "[i]n light of these **particular and unique circumstances**" [emphasis added].

In the *Matter of Robert J. Ponzini*, 268 A.D.2d 478 (2d Dep't 2000), the court sustained thirteen escrow-related charges stemming from the attorney's ex-partner's theft of escrow funds and imposed the sanction of disbarment. Upon reargument, the court found the disbarment was excessive discipline based upon "**the peculiar circumstances of this case**" [emphasis added] and substituted a one-year

suspension for the disbarment it had previously imposed. The circumstances in Petitioner's case are completely at variance with the circumstances in *Ponzini* — it is Petitioner herein, not his partner, who converted clients' escrow funds, among other misconduct.

In the *Matter of John H. Wynne*, 260 A.D.2d 23 (2d Dep't 1999), the court sustained five charges of misconduct, only one of which involved conversion of funds entrusted to the attorney as a fiduciary. As in the other cases cited by Petitioner, and unlike Petitioner's case, the attorney had a previously unblemished disciplinary record. Although the court's decision did not provide details, it stated, among other things, that the attorney had a "weakened physical and mental condition" and was under duress at the time.

In the *Matter of A. Richard Gambino*, 205 A.D.2d 212 (2d Dep't 1994), wherein the court suspended Gambino from the practice of law for one year, the facts are distinguishable from those in Petitioner's case. The charges involved "technical" violations of the disciplinary rules regarding escrow accounts, which did not threaten the integrity of the funds in the account. None of the seven charges sustained by the court involved the conversion of escrow funds, and Gambino had no significant disciplinary history.

In the *Matter of Mary Anne Scattaretico-Naber*, 250 A.D.2d 334 (2d Dep't 1998), the court censured the attorney after sustaining five charges of professional misconduct. Here, too, the facts are distinguishable from those in Petitioner's case. The charges against Scattaretico-Naber involved one isolated incident wherein she disbursed

more funds than she had on deposit for the benefit of a client, and she covered the overdraft with personal funds. She had no disciplinary history.

Petitioner argues that he was denied his right to equal protection of the law and should not have been disbarred because New York courts typically disbar attorneys only when they have committed escrow violations to the detriment of their clients. Petitioner cites *In the Matter of Salvatore DiMisa*, 218 A.D.2d 441 (2d Dep't 1996) in support of his argument. It is true that DiMisa failed to repay escrow funds to two clients, but he was disbarred because he "breached his fiduciary obligation to maintain escrow accounts intact," *id.* at 445, **not** because he failed to repay his clients. Petitioner also cites *In the Matter of Raymond G. Perez*, 223 A.D.2d 330 (2d Dep't 1996), but the attorney in *Perez* was disbarred "on default," *id.* at 331.

Petitioner's argument that he was denied his right to equal protection conveniently ignores the plethora of cases in which the Appellate Divisions imposed the sanction of disbarment for misconduct similar to, or arguably less egregious than, Petitioner's. *See, e.g., Matter of William P. Geier*, 274 A.D.2d 103 (2d Dep't 2000). In *Geier*, which Petitioner inexplicably cites as an example of misconduct *more* egregious than his own, the court disbarred the attorney although it sustained only a single charge against him — *i.e.*, that he converted $4,250 of a $29,500 down payment with which he had been entrusted for the benefit of his clients, the sellers of a home, by allowing the balance in his escrow account to fall below the amount he was required to be holding. Geier made full restitution to his clients, so they were not harmed by his conversion. In Petitioner's case, the court found that he made numerous conversions of clients'

escrow funds under fact patterns, the essential elements of which are virtually identical to those in *Geier*. Petitioner, too, eventually made restitution to his clients, but only after he **repeatedly** allowed the balance in his escrow account to fall below the amounts he was required to be holding on his clients' behalf. Moreover, Geier presented the court with more compelling mitigation than Petitioner herein, including a lack of any significant disciplinary history. In sum, Petitioner committed the same misconduct at issue in *Geier*, but repeatedly and over a period of years, with less mitigation. How then can Petitioner claim that disbarment was warranted in Geier's case, but not in his own, thus violating his right to equal protection of the law?

Petitioner further claims that he should not have been disbarred because he "lacked venality." In fact, the Appellate Divisions repeatedly have concluded that the absence of venality will not justify or otherwise excuse misconduct of the type engaged in by Petitioner herein. Such misconduct has been viewed as a serious violation of an attorney's fiduciary responsibilities, which undermines the public's trust in the Bar and fully warrants the ultimate sanction of disbarment absent unusual mitigating circumstances. *See, e.g.*, *Matter of Henry*, 221 A.D.2d 32 (2d Dep't 1996); *Matter of McFarlane*, 197 A.D.2d 197 (2d Dep't 1994); *Matter of Harris*, 124 A.D.2d 126 (2d Dep't 1987).

The Grievance Committee respectfully submits that, in Petitioner's case, the Appellate Division appropriately exercised its discretion by imposing the sanction of disbarment, based upon the unique set of facts and circumstances of the case. The court's decision to disbar Petitioner, after review and consideration of the extensive record in the case, reflects the court's assessment of the

egregiousness of his misconduct. Moreover, although Petitioner cloaked in equal protection language certain of the issues raised in his petition to this Court, they actually are questions of fact properly determined by the courts below. In sum, Petitioner has failed to present any substantial Constitutional issues, including those of equal protection, that warrant review by this Court.

III.

PETITIONER'S ALLEGATION THAT HIS COUNSEL FAILED TO SUBMIT POST HEARING BRIEFS IS NOT TRUE. HIS COUNSEL'S ACTIONS WERE PROPER AND DID NOT MATERIALLY PREJUDICE PETITIONER'S CASE.

Andrew Maloney, Petitioner herein, claims that his attorneys made material omissions amounting to "ineffective assistance of counsel." None of Mr. Maloney's claims is true.

It should be noted that Mr. Maloney successively retained and discharged three separate law firms during the course of the disciplinary proceeding, all of which have extensive experience in handling attorney disciplinary matters. Mr. Maloney's allegation that two of these well regarded firms, in succession, failed to submit "credible documentary evidence at trial that would have exculpated him from several of the pending charges," and additional characters letters that he provided to counsel strains credulity.

With respect to the first allegation, if Mr. Maloney had provided his counsel with documentary evidence that refuted "several" (unspecified) charges, as he claims, his experienced counsel certainly would have offered it

in evidence. With respect to the second allegation, Mr. Maloney's counsel submitted twelve character letters, in due course, which were admitted in evidence. Mr. Maloney admits in the instant petition that he did not provide the contested additional character letters to his counsel until **"subsequent to trial"** [emphasis added]. He also claims that his then counsel failed to submit "several critical pieces" of documentary evidence to the court **after** the hearing was concluded. With all due respect, Mr. Maloney knows, or should know, that it is wholly inappropriate and improper to put new evidence before the court, *ex post facto*, after the proceeding has been concluded.

Assuming *arguendo* the accuracy of Petitioner's allegations against his attorneys, their respective failures to submit the documents at issue almost certainly would not have affected the court's decision on the charges. Whether Petitioner belatedly disbursed escrow funds, after having been charged with his failure to do so, would not have been information relevant to, or determinative of, the few unspecified charges. Moreover, Petitioner's counsel submitted 12 character letters during the proceeding. It is extremely unlikely that the alleged failure to submit "several" other character letters would have affected the Appellate Division's ultimate decision to disbar Petitioner.

Mr. Maloney also falsely claims that his counsel failed to submit proposed findings to the Special Referee. As is set forth in the Report of the Special Referee, at page 10, at the conclusion of the hearing the matter was adjourned to May 24, 2000, for the mutual exchange and filing of proposed findings and conclusions. Said date was adjourned upon consent to June 14, 2000. However, Mr. Maloney changed counsel again on or about June 13, 2000, and the date for the

mutual exchange and filing of proposed findings and conclusions was again adjourned, to July 12, 2000. The Grievance Committee was served with a copy of Mr. Maloney's counsel's proposed findings on the adjourned return date, July 12, 2000, along with a copy of the letter reflecting transmittal to the Special Referee.

Proposed findings in the context of a disciplinary proceeding are intended to persuade the Special Referee that the evidence supports a finding in favor of the party and to provide the Special Referee with findings that he/she can adopt if he/she is so persuaded. In Mr. Maloney's case, the Special Referee obviously was persuaded that the evidence supported the proposed findings submitted by the Grievance Committee, and he issued a Report adopting same on or about July 19, 2000. The Referee could instead have adopted the proposed findings submitted by Mr. Maloney's counsel if he had found Mr. Maloney's position to be credible or supported by the evidence. He obviously did not do so. The fact that the Referee was not persuaded by Mr. Maloney's counsel's proposed findings, and thus did not adopt them, does not mean that his counsel failed to submit them to the Referee.

After the Special Referee issued the report sustaining the charges, the Grievance Committee moved in the Appellate Division, Second Department, for its confirmation. Mr. Maloney falsely claims that his counsel failed to respond to said motion. As is clearly reflected in the record below, the return date on the Grievance Committee's motion to confirm was August 25, 2000. Mr. Maloney's counsel requested several adjournments, at least through September 29, 2000. The Grievance Committee has no information regarding whether Mr. Maloney's counsel was granted additional adjournments. In any event, he submitted a cross motion on or about December 11, 2000.

Regardless of whether or not the cross motion was timely, its contents unquestionably were considered by the Appellate Division in reaching its April 17, 2001, decision to disbar Mr. Maloney, perhaps because of Mr. Maloney's counsel's intervening illness, which, upon information and belief, was serious and prolonged. The language of the decision clearly reflects that the court considered the cross motion, in that it makes a specific reference to it and notes the various mitigating factors that Mr. Maloney asks therein that the court consider in determining the appropriate measure of discipline to impose.

The Grievance Committee categorically denies Petitioner's allegation that it wrongfully provided the Appellate Division with portions of the transcripts of his depositions that were to be redacted. As can be determined from the list of exhibits included in the record below, the transcripts of Petitioner's depositions [PX-9 & PX -10] were redacted as stipulated between counsel.

The Grievance Committee further categorically denies Petitioner's allegation that it provided the Appellate Division with "several items" that were to be excluded from the record. It cannot respond with more specificity because Petitioner failed to identify the documents at issue.

CONCLUSION

The issues presented by Petitioner do not reach the constitutional dimensions worthy of address by the Supreme Court of the United States. Although Petitioner couched his arguments in constitutional due process and equal protection language, in fact, he simply disputes the factual findings regarding his gross misuse of clients' funds, and the legal determinations made by the courts below. None of the arguments advanced by Petitioner involves an important question of federal law that has not been, but should be, addressed by this Court, and its further consideration of Petitioner's claims is not warranted. Accordingly, the Grievance Committee respectfully urges that the petition for a writ of certiorari should be denied.

Respectfully submitted,

GARY L. CASELLA
Chief Counsel
GLORIA A. BUNZE*
Of Counsel
GRIEVANCE COMMITTEE FOR THE
NINTH JUDICIAL DISTRICT
Attorneys for Respondent
399 Knollwood Road, Suite 200
White Plains, NY 10603
(914) 949-4540

* *Counsel of Record*